

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MONADNOCK CONSTRUCTION, INC.,
Plaintiff,

Case No.: 16 CIV 00420 (JBW)(VMS)
ECF Case

-against-

WESTCHESTER FIRE INSURANCE
COMPANY,
Defendant.

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WESTCHESTER FIRE INSURANCE
COMPANY,
Third-Party Plaintiff,

-against-

GLASSWALL, LLC, UGO COLOMBO, and
SARA JAYNE KENNEDY COLOMBO,
Third-Party Defendants.

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**DECLARATION OF HOWARD KLEINHENDLER IN OPPOSITION TO WESTCHESTER
FIRE INSURANCE COMPANY'S MOTION FOR SUMMARY JUDGMENT AND IN
SUPPORT OF MONADNOCK CONSTRUCTION, INC.'S CROSS-MOTION FOR
SUMMARY JUDGMENT**

Howard Kleinhendler, Esq., pursuant to the provisions of 28 USC § 1746, declares the following under penalty of perjury:

1. I am a member of Wachtel Missry LLP, Counsel for Plaintiff Monadnock Construction, Inc. ("Monadnock" or "Plaintiff") in this action. I am fully familiar with the facts and circumstances of this dispute and submit this declaration in opposition to the motion by defendant Westchester Fire Insurance Company's ("WFIC" or "Defendant") for summary judgment ("WFIC'S R. 56.1 Stmt.") and in support of Monadnock's cross-motion for summary judgment.

2. I am attaching the following true and correct documents in opposition to WFIC's motion for summary judgment and in support of Monadnock's cross-motion for summary judgment.

Exhibit 1. Construction Agreement Between HPS 50th Avenue Associates LLC ("Parcel A") Hunters Point South Housing Development Fund Corporation Owner, and

Monadnock Construction Manager, dated February 14, 2013 (“Parcel A CM Agreement”) (Bates numbered MC_00014700- MC_00015031 and identified as Claimant’s Arbitration Exhibit 32).

- Exhibit 2. Construction Agreement Between Borden Avenue Associates LLC (“Parcel B”) Hunters Point South Housing Development Fund Corporation Owner, and Monadnock Construction Manager, dated February 14, 2013 (“Parcel B CM Agreement” and together with the Parcel A CM Agreement, the “CM Agreements”) (Bates numbered MC_00015032- MC_00015367 and identified as Claimant’s Arbitration Exhibit 33).
- Exhibit 3. Excerpts from the transcript of the hearing testimony of Gregory Bauso taken on February 17, 2016.
- Exhibit 4. Excerpts from the transcript of the hearing testimony of Paul Colapinto taken on November 14 and November 15, 2016.
- Exhibit 5. Excerpts from the transcript of the hearing testimony of John Anderson taken on December 9, 2016.
- Exhibit 6. AIA Document A401-2007 Standard Form of Agreement Between Contractor and Subcontractor between Contractor, Monadnock, and Manufacturer, Glasswall, LLC (“Glasswall”) dated January 3, 2013 and executed February 4, 2013 for Parcel A (Bates numbered MC_00000001- MC_00000059 and identified as Claimant’s Arbitration Exhibit 14).
- Exhibit 7. AIA Document A401-2007 Standard Form of Agreement Between Contractor and Subcontractor between Contractor, Monadnock, and Manufacturer, Glasswall, dated January 3, 2013 and executed February 4, 2013 for Parcel B (Bates numbered MC_00000070- MC_00000123 and identified as Claimant’s Arbitration Exhibit 15).
- Exhibit 8. Excerpts from the transcript of the hearing testimony of Michael Trovini taken on December 8, 2016.
- Exhibit 9. Baseline schedule from the Parcel A CM Agreement (Bates numbered MC_00000136- MC_00000139 and identified as Claimant’s Arbitration Exhibit 235).
- Exhibit 10. Baseline schedule from the Parcel B CM Agreement (Bates numbered MC_00000140- MC_00000143 and identified as Claimant’s Arbitration Exhibit 235).
- Exhibit 11. Email dated April 3, 2013 (Bates numbered MC_00003648 and identified as Claimant’s Arbitration Exhibit 38).

- Exhibit 12. Email string dated May 30 to May 31, 2013 (Bates numbered MC_00010590- MC_00010591 and identified as Claimant's Arbitration Exhibit 52).
- Exhibit 13. Email string dated July 17, 2013 (Bates numbered MC_00004825 and identified as Claimant's Arbitration Exhibit 57).
- Exhibit 14. Email string dated June 12, 2013 (Bates numbered MC_00003739 and identified as Claimant's Arbitration Exhibit 68).
- Exhibit 15. Letter dated August 12, 2013 (Bates numbered MC_00014345- MC_00014355 and identified as Claimant's Arbitration Exhibit 73).
- Exhibit 16. Letter dated August 12, 2013 (Bates numbered MC_00014356- MC_00014366 and identified as Claimant's Arbitration Exhibit 74).
- Exhibit 17. Email string dated July 31, 2013 (Bates numbered MC_00043953- MC_00043955 and identified as Claimant's Arbitration Exhibit 72).
- Exhibit 18. Letter dated August 16, 2013 (Bates numbered MC_00014239- MC_00014242 and identified as Claimant's Arbitration Exhibit 81).
- Exhibit 19. Notice of Default sent to Glasswall dated September 16, 2013 (Bates numbered MC_00014367- MC_00014370 and identified as Claimant's Arbitration Exhibit 87).
- Exhibit 20. Notice of Default sent to WFIC dated September 16, 2013 (Bates numbered MC_00014371- MC_00014375 and identified as Claimant's Arbitration Exhibit 88).
- Exhibit 21. Performance Bond Section 3.2 Notice sent to WFIC dated September 16, 2013 (Bates numbered MC_00014376- MC_00014380 and identified as Claimant's Arbitration Exhibit 89).
- Exhibit 22. Performance Bond Section 3.2 Notice sent to WFIC dated September 16, 2013 (Bates numbered MC_00014376- MC_00014380 and identified as Claimant's Arbitration Exhibit 90).
- Exhibit 23. Excerpts from the transcript of the hearing testimony of Steven Barber taken on November 16, 2016.
- Exhibit 24. Notice of Continuing Default sent to Glasswall dated October 23, 2013 (Bates numbered MC_00038103- MC_00038104 and identified as Claimant's Arbitration Exhibit 97).
- Exhibit 25. Letter Request for Meeting sent to Glasswall and WFIC dated October 25, 2013 (Bates numbered MC_00038099- MC_00038100 and identified as Claimant's Arbitration Exhibit 98).

- Exhibit 26. Performance Bond Section 3.2 Notice sent to WFIC dated October 25, 2013 (Bates numbered MC_00038101- MC_00038102 and identified as Claimant's Arbitration Exhibit 99).
- Exhibit 27. Email string dated November 14, 2013 (Bates numbered MC_00010022- MC_00010023 and identified as Claimant's Arbitration Exhibit 109).
- Exhibit 28. Letter dated November 27, 2013 (Bates numbered MC_00014385- MC_00014396 and identified as Claimant's Arbitration Exhibit 113).
- Exhibit 29. Letter dated November 27, 2013 (Bates numbered MC_00042234- MC_00042236 and identified as Claimant's Arbitration Exhibit 115).
- Exhibit 30. Letter dated November 27, 2013 (Bates numbered MC_000438127- MC_000438129 and identified as Claimant's Arbitration Exhibit 125).
- Exhibit 31. Notice of Continuing Default sent to Glasswall dated December 31, 2013 (Bates numbered MC_00038123- MC_00038124 and identified as Claimant's Arbitration Exhibit 133).
- Exhibit 32. Performance Bond Section 3.2 Notice sent to WFIC dated December 31, 2013 (Bates numbered MC_00038121- MC_00038122 and identified as Claimant's Arbitration Exhibit 132).
- Exhibit 33. Notice of Termination sent to Glasswall dated January 13, 2014 (Bates numbered MC_00038044- MC_00038046 and identified as Claimant's Arbitration Exhibit 141).
- Exhibit 34. Complaint in Westchester Fire Insurance Company v Glasswall, LLC, Ugo Colombo, and Sara Jayne Kennedy Colombo, 14-CV-1159 (SDNY) dated February 24, 2014 (Bates numbered MC_00043197- MC_00043208 and identified as Claimant's Arbitration Exhibit 142).
- Exhibit 35. Letter dated October 28, 2014 (Bates numbered MC_00042226 and identified as Claimant's Arbitration Exhibit 151).
- Exhibit 36. Email string dated November 13 to November 14, 2014 (Bates numbered MC_00042227- MC_00042230 and identified as Claimant's Arbitration Exhibit 153).
- Exhibit 37. Letter dated March 16, 2015 (identified as Claimant's Arbitration Exhibit 255).
- Exhibit 38. Letter dated March 16, 2015 (identified as Claimant's Arbitration Exhibit 256).

- Exhibit 39. Temporary Certificate of Occupancy dated July 8, 2015 (Bates numbered MC_00012172- MC_00012174 and identified as Claimant's Arbitration Exhibit 183).
- Exhibit 40. Temporary Certificate of Occupancy dated July 22, 2015 (Bates numbered MC_00012193- MC_00012195 and identified as Claimant's Arbitration Exhibit 186).
- Exhibit 41. Temporary Certificates of Occupancy for upper floors of Parcels A and B (identified as Claimant's Arbitration Exhibits 182-192).
- Exhibit 42. Architect's Certificate of Substantial Completion for Parcel A, dated November 30, 2015 (Bates numbered MC_00038226 identified as Claimant's Arbitration Exhibit 199).
- Exhibit 43. Architect's Certificate of Substantial Completion for Parcel B, dated November 30, 2015 (Bates numbered MC_00038227 identified as Claimant's Arbitration Exhibit 200).
- Exhibit 44. Letter dated December 3, 2015 (Bates numbered MC_00038223 and identified as Claimant's Arbitration Exhibit 196).
- Exhibit 45. Letter dated December 3, 2015 (Bates numbered MC_00038224 and identified as Claimant's Arbitration Exhibit 197).
- Exhibit 46. Respondent Glasswall's Post Trial Memorandum of Law, dated May 5, 2017.
- Exhibit 47. Photograph of Parcels A and B dated, January 2, 2014 (Bates numbered MC_00044247 and identified as Claimant's Arbitration Exhibit 246).

WHEREFORE, I respectfully request that WFIC's motion be denied in its entirety, Monadnock's cross-motion be granted in its entirety and that the Court award Monadnock such other and further relief as may be just and proper.

Dated: New York, New York
February 28, 2018

/s/ Howard Kleinhendler
Howard Kleinhendler